

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1058
By: Goldman; Talarico (Perry)
Finance
5/18/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1058 seeks to create increased interest and investment in certain housing projects across Texas by providing for a franchise and insurance tax credit for multifamily developments. Market factors like increased construction costs and interest rates impact development broadly, but especially for multifamily development. Multifamily developers utilize incentives like the ones proposed in H.B. 1058 to underwrite some of their development costs. This paid-forward approach allows them to offer a reduced rent to their tenants.

Broad economic principles influence where financed affordable housing will be built. Economics make it more difficult to build financed housing in major cities because land costs are higher and low-income rents are substantially below market rate. Nonetheless, with the help of additional federal, state, and local subsidies, many developers have made these projects financially feasible.

H.B. 1058 creates a state tax credit that mirrors the federal tax credit. Developers layer the federal and state credits together and by doing so they overcome high interest rates and construction costs while still offering affordable rents.

The tax credit will expire on December 31, 2035.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 1058 amends current law relating to a franchise or insurance premium tax credit for certain housing developments.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Housing and Community Affairs in SECTION 1 (Section 171.562, Tax Code) and SECTION 2 (Section 233.0054, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 171.562, Tax Code) and SECTION 2 (Section 233.0054, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter K, as follows:

SUBCHAPTER K. TAX CREDIT FOR CERTAIN HOUSING DEVELOPMENTS

Sec. 171.551. DEFINITIONS. Defines "allocation certificate," "credit," "credit period," "department," "development," "federal tax credit," "qualified basis," "qualified development," and "state housing credit ceiling."

Sec. 171.552. ENTITLEMENT TO CREDIT. Provides that a taxable entity is entitled to a credit against the taxes imposed under Chapter 171 (Franchise Tax) in the amount and under the limitations provided by this subchapter if the taxable entity owns a direct or indirect interest in a qualified development.

Sec. 171.553. APPLICATION FOR AND ISSUANCE OF ALLOCATION CERTIFICATE. (a) Requires a taxable entity or an entity subject to state premium tax liability as defined by Section 233.0001, Insurance Code, to apply to the Texas Department of Housing and Community Affairs (TDHCA) for an allocation certificate in connection with a development in which the taxable entity or other entity owns an interest. Requires that the application be submitted to TDHCA along with the application for an allocation of federal tax credits in a manner prescribed by TDHCA.

(b) Requires TDHCA to issue an allocation certificate if:

- (1) TDHCA approves the application submitted under Subsection (a);
- (2) the development meets the requirements to be a qualified development; and
- (3) TDHCA awards an amount of credit to the development under Section 171.554.

Sec. 171.554. AMOUNT OF CREDITS; METHOD OF AWARDS. (a) Requires TDHCA to, in the manner provided by this section, determine the total amount of credits under this subchapter and Chapter 233, Insurance Code, awarded for the credit period in connection with a qualified development and indicate the amount of credits awarded on the allocation certificate.

(b) Requires that the amount of credits awarded in connection with a qualified development over the credit period be the minimum amount necessary for the financial feasibility of the qualified development after considering any federal tax credit, subject to the limitations of this section.

(c) Prohibits the amount of credits awarded in connection with a qualified development over the credit period from exceeding the total federal tax credit awarded to the owner or owners of the qualified development over the 10-year federal tax credit period.

(d) Requires that the manner in which TDHCA awards the amount of credits be consistent with criteria established by TDHCA.

(e) Prohibits the total amount of credits awarded for a year in connection with all qualified developments financed through tax exempt bonds from exceeding the sum of:

- (1) 50 percent of the state housing credit ceiling for the year;
- (2) any portion of the state housing credit ceiling for the preceding year that could have been awarded for qualified developments financed through tax exempt bonds but was not awarded; and
- (3) any credits recaptured or otherwise returned to TDHCA in the year that were originally awarded in connection with a qualified development financed through tax exempt bonds.

(f) Prohibits the total amount of credits awarded for a year in connection with all qualified developments not financed through tax exempt bonds from exceeding the sum of:

- (1) 50 percent of the state housing credit ceiling for the year;

(2) any portion of the state housing credit ceiling for the preceding year that could have been awarded for qualified developments not financed through tax exempt bonds but was not awarded; and

(3) any credits recaptured or otherwise returned to TDHCA in the year that were originally awarded in connection with a qualified development not financed through tax exempt bonds.

(g) Requires TDHCA, in the qualified allocation plan, determine the priorities and criteria for awarding credits during years in which the amount of credits applied for exceeds the maximum amount that are authorized to be awarded under this section.

Sec. 171.555. APPORTIONMENT OF CREDIT. Authorizes the direct or indirect owners of a qualified development who intend to claim a credit under this subchapter or Chapter 233, Insurance Code, by agreement to determine the portion of the total amount of credits awarded under Section 171.554 that each owner is entitled to claim. Requires TDHCA to determine the portion each owner is entitled to claim based on each owner's ownership interest in the qualified development if the owners do not agree.

Sec. 171.556. LENGTH OF CREDIT; LIMITATION. (a) Requires a taxable entity entitled to a credit under this subchapter to claim the credit in equal installments during each year of the credit period.

(b) Prohibits the total credit claimed under this subchapter for a report, including any carry forward or backward under Section 171.557, from exceeding the amount of franchise tax due for the report after any other applicable credit.

Sec. 171.557. CARRY FORWARD OR BACKWARD. (a) Authorizes a taxable entity, if a taxable entity is eligible for a credit that exceeds the limitations under Section 171.556, to carry the unused credit back for not more than three tax years or forward for not more than 10 consecutive reports following the tax year in which the allocation certificate was issued. Provides that a credit carryforward from a previous report is considered to be used before the current year installment. Provides that a credit carried back to a previous report is considered to be used after any other franchise tax credit is applied to that report.

(b) Prohibits a credit that is not used from being refunded.

(c) Provides that the allocation of a credit in accordance with Section 171.559 does not extend the period for which a credit is authorized to be carried forward and does not increase the total amount of the credit that is authorized be claimed.

(d) Prohibits an entity from carrying back a credit under this subchapter to a tax year for which the report was originally due before January 1, 2026.

Sec. 171.558. RECAPTURE. (a) Provides that if a qualified development is subject to the recapture of a portion of the federal credit awarded or allocated to the development, then each taxable entity or entity subject to state premium tax liability as defined by Section 233.0001, Insurance Code, that has claimed or is entitled to claim a portion of the credit under this subchapter is also subject to the recapture of a portion of the credit under this subchapter.

(b) Provides that the amount of credit under this subchapter that is subject to recapture under this section is the same percentage of the amount originally awarded or allocated as the percentage of the amount of the federal credit originally awarded or allocated that is subject to recapture under federal law. Provides that the recapture of a credit under this section is not subject to a statute of limitations provided by Chapter 111 (Collection Procedures).

(c) Requires the owners of a qualified development that is awarded or allocated a credit under this subchapter or a representative of those owners to identify each taxable entity and each entity subject to state premium tax liability as defined by Section 233.0001, Insurance Code, that is subject to recapture of the credit under this section.

(d) Requires the owners of the development or a representative of those owners, not later than the 30th day after the date any owner of a qualified development receives notice that a federal credit awarded or allocated to the development is subject to recapture, to report to the Comptroller of Public Accounts of the State of Texas (comptroller):

(1) the amount of federal credit originally awarded or allocated to the development;

(2) the amount of federal credit that is subject to recapture and the percentage of the amount originally awarded or allocated which that amount represents; and

(3) each entity identified under Subsection (c).

Sec. 171.559. ALLOCATION OF CREDIT. (a) Authorizes a taxable entity to allocate the credit to its partners, shareholders, members, or other constituent taxable entities in any manner agreed to by those entities, if the taxable entity receiving a credit under this subchapter is a partnership, limited liability company, S corporation, or similar pass-through entity. Provides that this section does not prohibit a partner, member, or shareholder from holding an investment consisting only of a credit awarded under this subchapter or a federal credit.

(b) Requires a taxable entity that makes an allocation under this section to certify to the comptroller the amount of credit allocated to each constituent taxable entity or to notify the comptroller that it has delegated the duty of certification to one constituent taxable entity that is required to provide the notification to the comptroller. Provides that each constituent taxable entity is entitled to claim the allocated amount subject to any restrictions prescribed by this subchapter.

(c) Provides that an allocation under this section is not a transfer for purposes of state law.

Sec. 171.560. FILING REQUIREMENTS AFTER ALLOCATION. Requires a taxable entity that allocates a portion of the credit under Section 171.559, and each taxable entity to which a portion was allocated, to file with the taxable entity's report a copy of the certification or notice required by Section 171.559(b).

Sec. 171.561. APPLICATION FOR CREDIT. (a) Requires a taxable entity to apply for a credit under this subchapter on or with the tax report for which the credit is claimed and submit with the application a copy of the allocation certificate issued in connection with the qualified development and other information required by the comptroller.

(b) Requires the comptroller to adopt a form for the application for credit. Requires a taxable entity to use the form to apply for the credit.

Sec. 171.562. RULES; PROCEDURES. Requires TDHCA and the comptroller, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce this subchapter.

Sec. 171.563. COMPLIANCE MONITORING. (a) Requires TDHCA to monitor compliance with this subchapter in the same manner as TDHCA monitors compliance with the federal tax credit program.

- (b) Requires TDHCA to report any instances of noncompliance with this subchapter to the comptroller.

Sec. 171.564. INCLUSION OF INFORMATION IN LOW INCOME HOUSING PLAN. Requires TDHCA to include in the low income housing plan under Section 2306.0721 (Low Income Housing Plan), Government Code, information relating to the performance of the credit during the previous calendar year. Requires that the information:

- (1) specify the number of qualified developments for which allocation certificates were issued during the year and the total number of units supported by the developments;
- (2) describe each qualified development for which an allocation certificate was issued during the year, including:
 - (A) location;
 - (B) household type;
 - (C) available demographic information for the residents intended to be served by the development;
 - (D) the income levels intended to be served by the development; and
 - (E) the rents or set-asides authorized for the development;
- (3) include housing market and demographic information to demonstrate how the qualified developments, supported by the tax credits under this subchapter and Chapter 233, Insurance Code, are addressing the need for affordable housing in their communities; and
- (4) analyze any remaining disparities in the affordability of housing within those communities.

Sec. 171.565. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS. (a) Prohibits TDHCA, after December 31, 2025, from:

- (1) reserving an amount of credit under this subchapter for a qualified development for the purpose of issuing an allocation certificate for the development at a later date; or
 - (2) issuing an allocation certificate for a qualified development unless, on or before December 31, 2025, TDHCA reserved an amount of credit under this subchapter for the development for the purpose of issuing an allocation certificate at a later date if the requirements for issuance of the certificate are met.
- (b) Provides that on or after January 1, 2026:
- (1) TDHCA is authorized to issue an allocation certificate for which an amount of credit was reserved under Subsection (a)(2); and
 - (2) an entity is authorized to claim a credit on a tax report as provided by this subchapter or Chapter 233, Insurance Code, in connection with a qualified development for which TDHCA issued an allocation certificate or reserved an amount of credit before January 1, 2026.

Sec. 171.566. PRIORITY ALLOCATION FOR CERTAIN QUALIFIED DEVELOPMENTS. (a) Provides that this section applies only to a qualified development:

(1) that received an allocation of federal tax credits under the qualified allocation plan issued by TDHCA for 2021 or 2022;

(2) the owners or developers of which have owned the land necessary for the development since at least December 31, 2022;

(3) that is not financed through tax exempt bonds; and

(4) that TDHCA determines requires an allocation of credit under this subchapter to secure the financial feasibility of the qualified development after considering any federal tax credit.

(b) Requires TDHCA, for the first year TDHCA issues allocation certificates or reserves credit amounts for the purpose of issuing allocation certificates, notwithstanding Sections 171.554(e) and (f) and subject to Subsection (e) of this section, to use \$5 million of the state housing credit ceiling to award credits to qualified developments to which this section applies.

(c) Requires the owners of a qualified development to which this section applies who intend to apply for an allocation of credit under this section, or a representative of those owners, to notify TDHCA of that intent before the deadline for the qualified development to be placed in service. Provides that if the owners or their representative provide the notice required by this subsection, the deadline for the qualified development to be placed in service is extended until:

(1) the deadline set by TDHCA for submitting an application for an allocation under this section; or

(2) if an application for an allocation under this section is submitted before the deadline set by TDHCA, the date TDHCA issues a decision on the application.

(d) Requires an applicant for an allocation of credit under this section to submit to TDHCA:

(1) documents proving that the owners or developers of the qualified development meet the land ownership requirement under Subsection (a)(2);

(2) a financial analysis demonstrating that the allocation is necessary to secure the financial feasibility of the development as required by Subsection (a)(4); and

(3) any other documentation required by TDHCA to demonstrate that the qualified development meets the requirements provided by Subsection (a).

(e) Requires TDHCA to allocate the remaining portion to qualified developments to which this section does not apply, if the amount of state credits reserved under this section is not fully allocated to qualified developments to which this section applies.

(f) Requires TDHCA, in the qualified allocation plan, to determine the priorities and criteria for awarding credits under this section if the amount of credits applied for exceeds the maximum amount that is authorized to be awarded under this section.

SECTION 2. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 233, as follows:

CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING DEVELOPMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 233.0001. DEFINITIONS. Defines "allocation certificate," "credit," "qualified development," and "state premium tax liability."

SUBCHAPTER B. CREDIT

Sec. 233.0051. CREDIT. (a) Provides that an entity is eligible for a credit against the entity's state premium tax liability in the amount and under the limitations provided by this chapter if the entity owns a direct or indirect interest in a qualified development.

(b) Provides that an entity that claims a credit under this chapter is not required to pay additional retaliatory tax under Chapter 281 (Retaliatory Provisions) as a result of claiming the credit.

Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) Requires the entity to claim the credit in the manner provided by Section 171.556, Tax Code.

(b) Prohibits the total credit claimed under this chapter for a report, including any carry forward or backward described by Subsection (c), from exceeding the amount of the entity's state premium tax liability due for the report after any other applicable credit.

(c) Authorizes the entity to carry a surplus credit forward or backward as provided by Section 171.557, Tax Code.

Sec. 233.0053. APPLICATION FOR CREDIT. (a) Requires an entity to apply for a credit under this chapter on or with the tax report for the tax year for which the credit is claimed and submit with the application a copy of the allocation certificate issued in connection with the qualified development and any other information required by Subchapter K, Chapter 171, Tax Code.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires an entity to use this form in applying for the credit.

Sec. 233.0054. RULES; PROCEDURES. Requires the comptroller and TDHCA, in consultation with each other, to adopt rules and procedures to implement, administer, and enforce this chapter.

Sec. 233.0055. APPLICABLE PROVISIONS. Provides that the provisions of Subchapter K, Chapter 171, Tax Code, relating to recapture, allocation of credit, apportionment of credit, length of credit, filing requirements after allocation, and compliance monitoring apply to the credit authorized by this chapter.

SUBCHAPTER C. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS

Sec. 233.0101. EXPIRATION OF ALLOCATION AUTHORITY; USE OF ALLOCATED CREDITS. (a) Provides that the authority of TDHCA to reserve credit amounts and issue allocation certificates for purposes of Subchapter K, Chapter 171, Tax Code, and this chapter expires as provided by Section 171.565(a), Tax Code.

(b) Authorizes an entity to claim a credit under this chapter on a tax report as provided by Section 171.565(b), Tax Code.

SECTION 3. (a) Authorizes TDHCA to begin reserving credit amounts for the purpose of issuing allocation certificates under Subchapter K, Chapter 171, Tax Code, as added by this Act, in an open cycle beginning on January 1, 2024.

(b) Provides that Subchapter K, Chapter 171, Tax Code, as added by this Act, and Chapter 233, Insurance Code, as added by this Act, apply only to a tax report originally due on or after January 1, 2026, and before January 1, 2036, except as provided by Subsection (c) of this section.

(c) Provides that the expiration of the authority to allocate credits under Subchapter K, Chapter 171, Tax Code, as added by this Act, in accordance with Section 171.565, Tax Code, as added by this Act, does not affect the carryforward of a credit under:

(1) Section 171.557, Tax Code, as added by this Act; or

(2) Section 233.0052(c), Insurance Code, as added by this Act.

SECTION 4. Effective date: January 1, 2024.